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Agenda item 5
Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Security Council
Sixty-fourth year

Identical letters dated 13 August 2009 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to transmit a memorandum, addressed to the Secretary-General and the President of the General Assembly, which I received today from H.E. Mr. Tayseer Khaled, Head of the Palestinian National Committee for the Register of Damage caused by the construction of the Wall and member of the Executive Committee of the Palestine Liberation Organization, on the fifth anniversary of the International Court of Justice advisory opinion on the Wall (see annex).

I should be grateful if you would arrange to have the text of the present letter and its annex distributed as a document of the tenth emergency special session of the General Assembly, under agenda item 5, and of the Security Council.

(*Signed*) Riyad **Mansour**
Ambassador
Permanent Observer

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Annex to the identical letters dated 13 August 2009 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General and the President of the Security Council

[Original: Arabic and English]

A Memorandum

To the United Nations' Secretary General,
To the Head and Members of the General Assembly,
From the Head and Members of the Palestinian National Committee for the Record of the damages caused by the Wall, after 5 years on the Relevant Advisory Opinion of the International Court of Justice

The Palestinian National Committee for the Register of the Damage caused by the Wall (PNCRoD), held a meeting on July 9th, 2009, commemorating the 5-year Advisory Opinion of the International Court of Justice(ICJ) with regard to " *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (OPT), taken pursuant to General Assembly's resolution no. (ES-10 / 14), which was passed in the thirty-two extraordinary session held on Dec. 8th, 2003. It's worth mentioning here that the PNCRoD was enacted by a decree issued by President Mahmoud Abbas', and a by decision made by the Executive Committee of the Palestinian Liberation Organization (PLO).

In its meeting, the Palestinian National Committee stood before the relevant advisory opinion of the ICJ, the resolutions of the United Nations' General Assembly including the resolution to *establish* the United Nations Register of Damage, based in Vienna and affiliated to the United Nations, as well considered the Israeli State practices and the non-compliance to the advisory opinion that calls on Israel to stop construction works of the Wall ,to destroy what has already been built and the reparation for all damages incurred to the properties and interests of persons and Palestinian public institutions.

Thus, the committee decided to directly address and call on the United Nations Secretary General, and Head and Members of the General Assembly to hold on their responsibilities and press the State of Israel and its government to abide by the Advisory Opinion of the International Court of Justice with regard to the Wall, which it builds inside the 1967-Occupied Palestinian Territory in a flagrant violation of the International Law and resolutions of International Legitimacy.

On May 15th, 1948 Israel was declared as a state, pursuant to the recommendation of the United Nations General Assembly No. 181; the State of Israel won under the recommendation of the General Assembly (273), dated 11 May 1949, the United Nations' membership as a peace loving country, when expressly declared its full commitment before the Political Commission of the General Assembly to respect and implement all the resolutions of the United Nations pertinent to the Palestinian cause, including the recommendation made by the General Assembly for partition of Palestine, and internationalize the city of Jerusalem, the right of Palestinian refugees to return to their homes and properties, and other resolutions that

have been violated since the first day of the creation of the State of Israel. The State exerted its power to annex 23% of the land allocated to the Arab territory to the State of Israel, not only Israel did so, but it also resorted to annex more than half of the total land allocated to the Arab State through illegal ways, and contrary to the Covenant of the United Nations.

By force, it manages to impose the occupation and control the remaining territory of the Arab State in 1967. Despite the international community's rejection and condemnation of the Israeli occupation in 1967 , and its serious breach of the provisions of the Covenant of the United Nations and principles- based on the rejection of using force at the international relations level : the State of Israel is still committed and determined to continue its occupation and the imposition of its control over the Palestinian territories, despite the fact that occupation violates and breach all of the rules and principles of international law and resolutions of the international legitimacy.

Israel didn't stop at this point of breaching principles and provisions of the United Nations' Covenant, and international legitimacy's resolutions. But conducted over the past years intentional implementation, planning and imposing a de facto policy of annexing Palestinian land to the Israeli Occupation, this was proved through findings and facts of which:

- Freeing hands and encouraging Israeli citizens to violate the Palestinian lands and properties through establishing hundreds of colonies, settlements, in the occupied Palestinian territories.

- Encouraging and transferring its population to settle in the Palestinian territories, providing administrative and financial facilities for those who wish to live and stay in the occupied Palestinian territories.

- Annexing the city of Jerusalem and the three Latroon Palestinian villages occupied in 1967, to the State of Israeli.

- Annexing thousands of dunums of the Palestinian lands to build the wall inside the Occupied Palestinian territory.

- Not only Israel neglected the advisory opinion of International Court of Justice on the wall and the need to remove it, and restitution to persons in question, but it also continues to complete the construction work despite the advisory opinion. These acts indicate Israel's disregard of the international community, its conventions and its resolutions.

The State of Israel's defiance to the international will, neglecting its resolutions, principles and laws, and the continuation of violating all legitimate rights of the Palestinian people to self-determination and permanent sovereignty over its resources and wealth

wouldn't have been occurring without the international community's silence and its unjustified inaction to shoulder its legal responsibilities stipulated in the covenant. this continued and prolonged silence encouraged the State of Israel to persist in the committing of its crimes against the Palestinian population in the occupied Palestinian territory, including crimes of murder, torture, ill-treatment, forced exile, and illegal arrest, imposing collective punishments through the closure and siege of cities and communities, deliberately putting people in difficult living conditions, looting of the Palestinians' resources and wealth, and destroying, looting and confiscating of their properties.

Israel horrible crimes, violations and other acts against the principles and provisions of the Covenant, drove the General Assembly to drop State description of Israel as a peace-loving state, being issued within many of the international resolutions of which: the General Assembly's resolution no. 24 / 209, "C" of Dec. 11th, 1987, and resolution no. 45 / 83, dated December 13th, 1990.

Not only this, but presenting the horrible Israeli practices and violations, the General Assembly had criminalized the State of Israel in an unprecedented speech that describes Israel as a State committing war crimes against the occupied Palestinian territories. The case is clearly mentioned in the context and content of the General Assembly's resolution A, B 43 /58, issued on Dec 6th, 1988, which stipulates that "the General Assembly,... declares once again that Israel was and still is committing a serious breach of the provisions of the Convention, and considered the crimes as war crimes and insult for the humanity ...". This description was also confirmed by the General Assembly resolution 44 / 48, issued on Dec. 8th, 1989, resolution No. 45 / 74, issued on Dec 11th, 1990, and resolution No. 46 / 47, issued on Dec. 9th, 1990.

The wall that Israel began to build in June 2002, at the pinnacle of " the war of settlements' safety " or what Israel named at that time "Operation of the Defensive Shield" reflects in the design and implementation its aggressive nature, being the most serious stage, of the Israeli settlement expansion project. Hence, the International Court of Justice did not wrongly judge or the goal in the ruling issued by it in July 2004 concerning the wall.

In the political aspect, the International Court of Justice certified that the West Bank, including Jerusalem, of June 1967's borders, as being an occupied territories and not a disputed territory; and that building the wall in its current track, or tracks that the wall would have, puts a restriction on the right of the Palestinian people to self-determination, and the right of building an independent Palestinian State; a right guaranteed by international legitimacy resolutions including resolution no.181 of the partition in 1947. It is a right that should not be detracted whether implemented on time or later on.

The advisory opinion thus refutes the Israeli version, and the Israeli position on the identity of the territory on which Israel builds the wall, as being not only occupied West Bank – including Jerusalem, but as well it was also allocated to the Palestinian State by resolution 181. This is a very important connected political aspect in the advisory opinion of

International Court of Justice, besides its legal one. Thus, the advisory opinion connects the legal aspect and sheds light on the political aspect related to the Palestinian people right of self-determination, a right through which Israel tries to impose wide range of restrictions through building the wall.

Furthermore, the advisory opinion highlighted the status of Arab Jerusalem and its surroundings. It decided contrary to the Israeli claim, and annexation laws issued by the Knesset, that Jerusalem, in which the wall is built, and its surroundings, is an occupied Palestinian territory. Thus, Israel's claim that Jerusalem is the capital of the State of Israel is not valid anymore. It also decided that Israel must abide by the International Humanitarian Law, and International Human Rights Law to ensure freedom of access to Holy places that are under its control, which the construction of the wall in Jerusalem and its surroundings hinders.

It is not easy to divide the political and legal aspects at the advisory opinion of International Court of Justice, however, we can say that the opinion in the legal aspect, relevant to construction of the wall, had obviously specified that the route of the wall chosen by Israel was not necessary, and it is not convincing to achieve security goals. According to the advisory opinion of the Court being a Supreme International Judicial Authority, the wall in its current track associates a serious violation to the Palestinians' rights, and that the attacks caused by the construction of the wall, cannot be justified as of military necessities or requirements of national security or keeping Israel public order.

Thus, the International Court of Justice demanded the state of Israel to stop the ongoing construction works, and to demolish and remove constructed parts as being a flagrant violation of international law. It also demanded Israel, being an occupying State to restitute for the damages caused by the construction and demolition of the wall.

The advisory opinion of the International Court of Justice called, particularly, the United Nations' General Assembly and the Security Council for implementing measures to end the illegal situation caused by the construction of the wall. It also decided to form a Register to list the damages. It also called upon all United Nations member countries not to acknowledge the illegal situation resulting from the construction of the wall, and to refrain from providing any political, diplomatic, or material assistance to the State of Israel in this regard. As for the damages that the international Court of Justice's advisory opinion talks about are not only the damages of the individuals or financial damages but (all) the damages as stipulated in paragraph 163 of the Advisory Opinion, which means the damages of the people, governmental lands, WAQF land, municipal and local councils' lands, the communal land, pastures and natural resources, particularly, water resources, public property, and infrastructure, and others incurred to the social, health, and educational services.

The United Nations' General Assembly stood in more than one occasion against the Israeli policy, and commented the advisory opinion of International Court of Justice. That was in Dec. 2003, and in July 2004 when it decided to adopt the advisory opinion of the Court by

a majority of 150 States. In Dec. 2006, it decided to establish the office of the Register of Damage and Restitution by a majority of 146 states.

In spite of that, Israel continues the policy of neglecting the United Nations and the international community, besides that, the Wall continues to advance on the Palestinian lands. According to International Organizations estimations, including those affiliated to the United Nations, such as, Office of Coordination of Humanitarian Affairs (OCHA) and UNRWA, Israel has completed 66% of the construction of the wall, while currently continues to build 10% of its 723-length kilometers, equivalent to twice the length of the borders of June 1967. According to these estimations, dozens of thousands of Palestinian citizens, who hold West Bank's identity cards and residing in 35 communities will find themselves trapped between the wall and the Armistice Line of 1949, and about 250 thousands of the Palestinian citizens in Jerusalem and its surroundings. This means that, the wall will isolate about 285 thousands of Palestinian citizens from the West Bank. In addition and by various Monitoring Systems, about 125 thousand citizens are surrounded, living in 28 communities isolated by the wall from three directions, and about 26 thousand citizens residing in 8 communities isolated from four directions, and with more than 66 gates on the wall supplied Control Systems, half of which need permission to be accessed, from the occupation forces and to pass through, and the other half is closed. This is reality of the wall, it is a wall of annexation, expansion and is rightly considered as the most serious stage of the Israeli settlement expansion project implemented by Israel in the West Bank, including Jerusalem, through which Israel plans to lay hands on about 22% of the West Bank's land, and to control of the Palestinian underground aquifers. Next to the visible wall from the West, there is another invisible wall to the eastern border of the West Bank, with a depth of 15 - 20 kilometers which isolates areas of the Jordan Valley by a series of military orders and Control Systems, ditches and fences, which enable Israel to lay hand on about 23% of the West Bank, in an obvious measure aimed at drawing the parameters of any political settlement that Israel attempts to impose on the Palestinian people.

The Palestinian National Committee for the Register of the Damage expresses its appreciation for the efforts made by the General Assembly of the United Nations to condemn and denounce Israeli practices and violations, and to confirm the legitimate rights of the Palestinian people for self-determination, acquiring their legitimate rights to freedom, getting rid of the Israeli occupation and control, and in raising the issue of the Wall at the International Court of Justice. The Committee also hopes that the General Assembly seeks the embodiment and the practical implementation of the concept of international law, and the principles of international legitimacy through a serious and effective intervention to redress and protect the Palestinian people against the crimes and violations being committed against on Daily basis.

For the General Assembly to enforce implementation of the context of the advisory opinion of International Court of Justice and the legal obligations of the Israeli occupation, require immediate intervention of the General Assembly by:

- Taking obvious resolution to abide member states of the United Nations to refrain from acknowledging the facts imposed by Israeli occupation on the occupied Palestinian territory caused by the wall, and to ban providing any support that may help the occupying Power to continue building the wall.

- Taking explicit and unequivocal resolutions that obliges Israel to stop construction of the Wall, and remove what has been accomplished in building, to return the occupied Palestinian territories to the previous situation that was before the construction of the wall.

- Using diplomatic measures of influence and pressure through urging members of the United Nations to halt economic interactions with Israel in case it refused to abide by the General Assembly's resolutions, rules and principles of the International Law, and rules of the Covenant.

- At the same time, the PNCRoD calls on the United Nations' Secretary General to clarify the vision and mission of the office of the UNRoD, in Vienna that accomplished intake claims of individual loss in a number of villages in Jenin Governorate – north of the West Bank- with regard to registration's goal, procedures and whether this will be in a frame of an ongoing process that includes verifying Damages on the ground as a basic to evaluate the size and value of Damages caused by erecting the wall, not only for the individuals but also for the public institutions and public damage in accordance with the Advisory opinion of the International Court of Justice, and to take into consideration the views and demands that the National Palestinian Committee discussed with the UNRoD Office, specifically with the Executive Director Mr. Vladimir Goryayev in more than one occasion of which:

- Inaugurating an Office for the UNRoD in the occupied Palestinian Territories besides the Office in Vienna, in order to facilitate and develop cooperation between the Palestinian side, being the affected party, and the United Nations, in a way that preserves the Palestinian rights according to the Advisory opinion of the International Court of Justice.

- Boosting and developing method of registering the Damages through employing more qualified Crew and not suffice with the recently very limited number working in very slow process, to be able to accomplish this great task, which the affected people are bending great hope on it.

- To place the intake of claims and registration of damage in the city of Arab Jerusalem, on the agenda and priorities of the UNRoD team working in Palestine these days, in an obvious message to the Israeli government saying that the Advisory Opinion of the international Court of Justice considers the Arab Jerusalem as an integral part of the Occupied Palestinian Territory since 1967.

With Best Regards

Tayseer Khaled

T. Khaled

Head of the Palestinian National Committee for register of Damage, caused by the construction of the wall.
Member of the Executive Committee of the Palestinian Liberation Organization (PLO).

Ramallah: July 10th, 2009